

FILED & ENTERED

JUL 06 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY tatum DEPUTY CLERK

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:

ANGEL R. ROBINSON-MALDONADO,

Debtor.

JOSEPHINE JEANE S. ROBINSON,

Plaintiff,

vs.

ANGEL R. ROBINSON-MALDONADO,

Defendant.

Case No. 2:14-bk-22962- RK

Chapter 7

Adv. No. 2:14-ap-01660-RK

**MEMORANDUM DECISION AFTER
TRIAL ON PLAINTIFF'S CLAIMS FOR
DENIAL OF DISCHARGE PURSUANT
TO 11 U.S.C. § 727(a)(4)**

The above-captioned adversary proceeding came on for trial before the undersigned United States Bankruptcy Judge on January 19, 2017 on the amended complaint of Plaintiff Josephine Jeane S. Robinson ("Plaintiff") asserting claims for denial of discharge of Defendant Angel R. Robinson-Maldonado ("Defendant"), Debtor, pursuant to 11 U.S.C. § 727(a)(4). At trial, Andrew E. Smyth, of the Law Offices of SW Smyth LLP, appeared for Plaintiff, and Robert E. Brode, Attorney at Law, appeared on behalf of Defendant.

1 After trial, on February 2, 2017, Plaintiff lodged her proposed findings of fact and
2 conclusions of law, Electronic Case Filing Number (“ECF”) 77, and filed a supplemental
3 trial brief, ECF 76. On February 15, 2017, Defendant lodged her proposed findings of
4 fact and conclusions of law through her counsel of record. ECF 78. On February 17,
5 2017, the court took the matter under submission.

6 Having considered the witness testimony at trial, Plaintiff’s exhibits received at
7 trial, and the oral and written arguments of the parties, the court hereby makes the
8 following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal
9 Rules of Bankruptcy Procedure and Rule 52 of the Federal Rules of Civil Procedure.

10 **BACKGROUND**

11 On July 7, 2014, Defendant commenced the underlying bankruptcy case by filing
12 her voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C.
13 Petition, Main Bankruptcy Case ECF 1, Plaintiff’s Trial Exhibit 23. Defendant filed her
14 bankruptcy petition as a self-represented litigant with the assistance of a non-attorney
15 bankruptcy petition preparer, Afaf Sheikh, of the business called “We the People.” *Id.* at
16 3.

17 On October 16, 2014, Plaintiff commenced this adversary proceeding by filing her
18 adversary complaint entitled “Challenge Dischargeability of Certain Debts”, alleging that
19 Defendant made false statements on her bankruptcy petition and schedules in reporting
20 her income and expenses and made misrepresentations to her about loans made by
21 Plaintiff to Defendant. ECF 1. On October 30, 2014, Defendant filed a response to the
22 complaint, essentially denying the material allegations of the complaint. ECF 4. Plaintiff
23 and Defendant are sisters-in-law as Plaintiff is married to Defendant’s brother. *Id.* at 4;
24 Plaintiff’s Trial Testimony, *Audio Recording of Trial* at 10:57-10:58 a.m.

25 On October 27, 2015, Plaintiff filed a Motion to amend complaint with the proposed
26 amended complaint attached. *Notice of Motion: Motion to Amend Complaint; Declaration*
27 *of Plaintiff Josephine Jeane S Robinson (Proposed Amended Complaint Attached)*, ECF
28

1 25, filed on October 27, 2015. On December 1, 2015, the court filed and entered its
2 memorandum decision and order on this motion, which granted this motion in part and
3 denied it in part, allowing Plaintiff to amend the complaint to assert claims to deny
4 Defendant's discharge under 11 U.S.C. § 727(a)(4) on grounds that Defendant knowingly
5 and fraudulently made false oaths in connection with her bankruptcy case and a claim for
6 relief pursuant to 11 U.S.C. § 523(a)(2)(A) on grounds that Defendant made a
7 representation to her regarding a credit account co-signed for her by Plaintiff to buy
8 laptop computers from Best Buy, but denied the motion to add claims under 11 U.S.C. §
9 523(a)(2)(A) for three new transactions. *Memorandum Decision and Order Granting in*
10 *Part and Denying in Part Plaintiff's Motion to Amended Complaint*, ECF 31.

11 On July 1, 2016, Defendant filed a motion for summary judgment with an amended
12 notice of motion filed on July 7, 2016. *Defendant's Notice and Motion for Summary*
13 *Judgment*, ECF 51, and *Amended [Notice of] Motion for Summary Judgment*, ECF 53.
14 On October 7, 2016, the court filed and entered its order granting in part and denying in
15 part Defendant's summary judgment motion. *Order Granting in Part and Denying in Part*
16 *Defendant's Motion for Summary Judgment*, ECF 73, filed and entered on October 7,
17 2016. The court granted Defendant's motion for summary judgment as to Plaintiff's claim
18 under 11 U.S.C. § 523(a)(2)(A) on grounds that Plaintiff failed to submit evidence
19 sufficient for the court to find in her favor on such claims, but denied Defendant's motion
20 as to Plaintiff's claims under 11 U.S.C. § 727(a)(4) on grounds that there were genuine
21 issues of material fact to be determined at trial. *Id.* The court set a one-day trial on
22 January 19, 2017 on Plaintiff's remaining claims under 11 U.S.C. § 727(a)(4). *Id.*

23 On January 19, 2017, the court conducted a one-day trial in this matter, heard
24 testimony from Plaintiff and Defendant and received Plaintiff's trial exhibits on condition
25 that Plaintiff's data compilations would be considered only as demonstrative evidence or
26 argument rather than substantive evidence. *Audio Recording of Trial* at 11:28-11:29 a.m.
27 Defendant did not offer any exhibits at trial.

1 Plaintiff in her amended complaint, the operative complaint in this matter, alleges
2 that Defendant made false oaths by failing to list all sources of income, bank accounts,
3 creditors, amounts owed to her, and that Defendant overstated expenses in her original
4 bankruptcy petition and schedules, and specifically, Schedule J-*Your Expenses*, in
5 violation of 11 U.S.C. § 727(a)(4). *Amended Complaint*, Adversary Proceeding ECF 25
6 at 6. As discussed herein, the court determines that Plaintiff has not met her burden of
7 proving her claims under 11 U.S.C. § 727(a)(4) by a preponderance of the evidence that
8 Defendant knowingly and fraudulently made a false oath in or in connection with this
9 bankruptcy case.

10 **ANALYSIS**

11 11 U.S.C. § 727(a)(4) provides that the court shall grant the debtor a discharge
12 unless “the debtor knowingly and fraudulently, in or in connection with the case—(A)
13 made a false oath or account.” To prevail on an 11 U.S.C. § 727(a)(4) claim, Plaintiff has
14 the burden to prove, by a preponderance of the evidence, that “(1) the debtor made a
15 false oath in connection with the case; (2) the oath related to a material fact; (3) the oath
16 was made knowingly; and (4) the oath was made fraudulently.” *Retz v. Samson (In re*
17 *Retz)*, 606 F.3d 1189, 1197 (9th Cir. 2010), *citing and quoting, Roberts v. Erhard (In re*
18 *Roberts)*, 331 B.R. 876, 882 (9th Cir. BAP 2005). “The fundamental purpose of §
19 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without
20 having to conduct costly investigations.” *Id.* at 1196-1197, *citing and quoting, Fogal*
21 *Legware of Switzerland, Inc. v. Wills (In re Wills)*, 243 B.R. 58, 63 (9th Cir. BAP 1999).

22 “A fact is material ‘if it bears a relationship to the debtor’s business transactions or
23 estate, or concerns the discovery of assets, business dealings, or the existence and
24 disposition of the debtor’s property.’” *In re Retz*, 606 F.3d at 1197, *citing and quoting,*
25 *Khalil v. Developers Surety & Indemnity Co. (In re Khalil)*, 379 B.R. 163, 173 (9th Cir. BAP
26 2007), *aff’d*, 578 F.3d 1167, 1168 (9th Cir. 2009). This statement in *Retz* does not
27 precisely fit the situation here because in this case, Plaintiff is alleging that Defendant has
28

1 failed to list all sources of income in her bankruptcy petition and schedules and
2 overstated her expenses on Schedule J: Your Expenses. *Notice of Motion: Motion to*
3 *Amend Complaint; Declaration of Plaintiff Josephine Jeane S Robinson (Proposed*
4 *Amended Complaint Attached)*, ECF 25 at 7 (Amended Complaint at 2, ¶¶ 4 and 5).
5 Misstatements of income and expenses on a bankruptcy debtor's bankruptcy petition and
6 schedules would be material because they would affect the determination of whether the
7 debtor had sufficient income to make payments under a plan under Chapter 11 or 13 of
8 the Bankruptcy Code, 11 U.S.C. See 1 March, Ahart and Shapiro, *California Practice*
9 *Guide: Bankruptcy*, ¶¶ 5:801, 5:811 and 5:812 at 5(l)-149 -5(l)-150 (2016). Defendant's
10 amended Schedule I:Your Income and amended Schedule J:Your Expenses show a net
11 negative monthly net income (income minus expenses) of -\$2,336.04. Main Bankruptcy
12 Case ECF 25 and ECF 26. Plaintiff contends in her proposed findings of fact and
13 conclusions of law that due to Defendant's understatement of income and overstatement
14 of expenses on her amended Schedules I and J that her monthly net income should be
15 adjusted \$2,800 upwards, resulting in a positive monthly net income of \$463.96, which
16 could be used to fund a Chapter 11 or 13 plan to pay debts owed to creditors like her.
17 *Plaintiff's (Proposed) Findings of Fact and Conclusions of Law*, ECF 77, lodged on
18 February 2, 2017, at 2-3.

19 With regard to establishing that a debtor acted "knowingly," "[a] debtor 'acts
20 knowingly if he or she acts deliberately and consciously.'" *In re Retz*, 606 F.3d at 1197,
21 *citing and quoting inter alia*, *In re Khalil*, 379 B.R. at 173. Lastly, "to demonstrate
22 fraudulent intent, [the objecting party bears] the burden of showing that: (1) [the debtor]
23 made the representations; (2) . . . at the time he knew they were false; (3) . . . he made
24 them with the intention and purpose of deceiving the creditors." *Id.* at 1198-1199, *citing*
25 *and quoting inter alia*, *In re Khalil*, 379 B.R. at 173.

26 On July 1, 2014, Defendant filed her original Chapter 7 petition and bankruptcy
27 schedules. At trial, Defendant testified that she relied on an independent paralegal in
28

1 preparing her bankruptcy petition and bankruptcy schedules. *Audio Recording of Trial* at
2 11:31 a.m. On September 19, 2014, the Chapter 7 Trustee conducted Defendant's
3 meeting of creditors' pursuant to 11 U.S.C. § 341(a). See docket entry for Continued
4 Meeting of Creditors on September 19, 2014, Main Bankruptcy Case ECF 13, dated
5 August 27, 2014. Defendant further testified that although she filled out her bankruptcy
6 schedules truthfully and to the best of her ability, the Chapter 7 Trustee advised
7 Defendant at the meeting of creditors that she should hire an attorney to help her file
8 more accurate amended schedules. Defendant's Trial Testimony, *Audio Recording of*
9 *Trial* at 11:32-11:33 a.m. Defendant testified that she has four academic degrees
10 (bachelor's degrees in legal studies, criminal justice and psychology and a master's
11 degree in organizational leadership from Brandman University), but none of these would
12 make her qualified to fill out bankruptcy schedules. *Id.* at 11:47-11:48 a.m. The court
13 finds this testimony to be credible. On October 31, 2014, Defendant filed her amended
14 bankruptcy schedules relying on the assistance of legal counsel. *Amended Statement of*
15 *Related Cases; Amended Summary of Schedules; Amended Schedules B-J*, Main
16 Bankruptcy Case ECF 18-26; *Amended Statement of Financial Affairs*, Main Bankruptcy
17 Case ECF 27. That Defendant promptly hired an attorney and filed amended and
18 corrected bankruptcy schedules shortly following the Chapter 7 Trustee's advice, that is,
19 within 45 days, indicates her good faith in making accurate disclosures on her bankruptcy
20 schedules.

21 **A. Understated Income**

22 Plaintiff contends that Defendant made a false oath on her original Schedule
23 I: Your Income because the amount of \$6,307.05 listed as Defendant's gross monthly
24 wages, salary and commissions as of the petition was understated. *Plaintiff's (Proposed)*
25 *Findings of Fact and Conclusions of Law*, ECF 77, lodged on February 2, 2017, *citing*,
26 *Plaintiff's Exhibit 2, Defendant's Paystub, issued May 9, 2014 (for monthly period ending*
27 *April 30, 2014); Petition, Schedule I: Your Income*, at 31, Plaintiff's Trial Exhibit 23.

1 Plaintiff contends that Defendant's gross monthly wages, salary and commissions were
2 \$7,223.08 and that this item was understated by \$916.03. *Id.*

3 Defendant's paystub for April 2014 showed that she had gross pay of \$7,001.00.
4 *Plaintiff's Exhibit 2, Defendant's Paystub, issued May 9, 2014 (for monthly period ending*
5 *April 30, 2014).* As previously noted, Defendant prepared her bankruptcy petition and
6 original bankruptcy schedules on her own only with the assistance of a paralegal, and not
7 with the assistance of an attorney, and she was advised by the Chapter 7 Trustee at the
8 meeting of creditors that she needed to find an attorney and file amended and corrected
9 schedules, which she did promptly, that is, within 45 days of the meeting of creditors.
10 On her amended Schedule I, Main Bankruptcy Case ECF 25, Defendant stated that her
11 monthly gross wages, salary and commissions were \$7,001.00, which is the same
12 amount listed on her paystub for April 2014, which is Plaintiff's Trial Exhibit 2.

13 Based on Defendant's bank account records for April – June 2014, Plaintiff's
14 Exhibits 3-5, Defendant's average gross wages, salary and commissions from her job as
15 an administrative assistant at Santa Clarita Community College was \$6,206.55, which
16 includes Defendant's cash out of vacation time in May 2014 of \$2,093.00. *Citibank*
17 *Account Statements*, Plaintiff's Trial Exhibits 3-5. This amount was actually only \$100.51
18 less than the \$6,307.05 that she listed as her monthly gross wages, salary and
19 commissions on her original Schedule I: Your Income. Debtor's amended Schedule I:
20 Your Income listed that her gross income was \$7,001. *Amended Schedule I: Your*
21 *Income*, Bankruptcy Case 14-22962, Main Bankruptcy Case ECF 25, filed and entered
22 on October 31, 2014.

23 Plaintiff also testified that her wages were being garnished at the time that she
24 filed her bankruptcy petition, which could explain some of the alleged discrepancies
25 between the stated income and the income shown on her paystubs. Defendant's Trial
26 Testimony, *Audio Recording of Trial* at 10:15-10:17 a.m.; 11:38 a.m. and 11:49-11:50
27 a.m.

1 The court finds that Defendant's testimony was credible in explaining her good
2 faith efforts to complete her bankruptcy schedules and that this apparent \$100.51
3 differential may be explained by the prepetition wage garnishments and is not material as
4 discussed herein. Thus, the court further finds that Plaintiff did not meet her burden to
5 prove by a preponderance of the evidence that Defendant willfully and fraudulently made
6 a false oath by understating her income on her bankruptcy schedules.

7 **B. Sources of Income**

8 Plaintiff contends in her trial brief that Defendant failed to list all sources of income
9 in her original Chapter 7 bankruptcy petition and schedules. *See Plaintiff's Trial Brief*,
10 ECF 76, filed on January 21, 2017, at 4. The court notes that Plaintiff did not attempt to
11 file her trial brief until attempting to manually file and serve it at trial on January 21, 2017,
12 which is not timely under Local Bankruptcy Rule 9013-2, which requires that trial briefs be
13 filed and served not less than 7 days before trial. *Audio Recording of Trial* at 11:51 a.m.

14 Plaintiff's trial brief was not actually filed until January 21, 2017, which was two
15 days after trial, and served by mail on the date of trial, January 19, 2017. *Plaintiff's Trial*
16 *Brief*, ECF 76, filed on January 21, 2017. Moreover, this argument in Plaintiff's trial brief
17 was not asserted in Plaintiff's proposed findings of fact and conclusions of law. *See*
18 *Plaintiff's (Proposed) Findings of Fact and Conclusions of Law*, ECF 77, lodged on
19 February 2, 2017. This argument should not be considered because it was asserted in a
20 late trial brief and it was abandoned, not being asserted in Plaintiff's proposed findings of
21 fact and conclusions of law.

22 Assuming that the argument was not late or abandoned, the court addresses the
23 argument. In support of this argument, Plaintiff offered copies of Defendant's bank
24 account statements from the periods of April 9 - May 8, 2014, May 9 - June 8, 2014 and
25 June 9 - July 8, 2014. *Citibank Account Statements*, Plaintiff's Trial Exhibits 3-5.
26 Defendant's direct deposits of her pay from her employer for this time period shown on
27 these bank statements that during each month, Defendant was receiving one paycheck in
28

1 the amount of \$2,969.36 and another in the amount of \$2,539.52. *Id.* Plaintiff argues
2 that Defendant made a false oath by failing to disclose her income on her schedules
3 because on May 1, 2014, there was a bank teller deposit in the amount of \$2,093.00,
4 which was in addition to her regular biweekly direct deposit paycheck from the community
5 college where she works as an administrative assistant, *Citibank Account Statement*,
6 *Plaintiff's Trial Exhibit 3* at 3. Plaintiff further argues that Defendant's June-July 2014
7 bank statement listing bank teller deposits of \$2,969.35 and \$2,539.52 (the same
8 amounts as her regular direct deposit amount from her employer), rather than direct
9 deposits from her employer, also show that Defendant made a false oath about her
10 income by allegedly failing to report an alternate source of income on her income
11 schedule.

12 In response, Defendant testified at trial that the May 6, 2014 bank teller deposit of
13 \$2,093 was from a paper check issued by her employer in this instance for her unused
14 vacation time under her employer's policy to allow employees to cash out unused
15 vacation time through issuance of a paper check, and she specifically recalled this
16 particular deposit because she used this money to pay her attorneys' fees in connection
17 with her bankruptcy case. Defendant's Trial Testimony, *Audio Recording of Trial* at
18 10:05-10:06 a.m. According to Defendant, nonrecurring salary payments from her
19 employer like this one were made using paper checks rather than direct deposit like the
20 rest of her salary payments. *Id.*

21 The court finds Defendant's explanation of this item to be credible and that it does
22 not show she failed to disclose an alternate form of income, and that her Schedule I: Your
23 Income accurately reflected her current monthly income as of the date of the filing of the
24 bankruptcy petition on July 7, 2014.

25 Defendant in her trial testimony explained why her deposits in the June - July 2014
26 bank statements were not made by direct deposit. Defendant's Trial Testimony, *Audio*
27 *Recording of Trial* at 10:15-10:16 a.m. and 11:49-11:50 a.m. She testified that because
28

1 her salary was being garnished by a hard money lender at the time, her employer's policy
2 was to write the employees a paper check that needed to be manually deposited rather
3 than making the direct deposit as usual. *Id.* This testimony explains why her direct
4 deposits from her employer did not appear on her June-July 2014 bank statement. Since
5 the amounts of the manual deposits were the same as her prior previous direct deposits
6 of her salary by her employer, the court finds Defendant's testimony that these payments
7 were her regular salary payments paid by manual check rather than from an alternate
8 and undisclosed source of income to be credible and sufficient to show that there was no
9 false oath regarding her salary payments.

10 Based on the foregoing, the court determines that Plaintiff has not met her burden
11 to prove by a preponderance of the evidence that Defendant willfully and fraudulently
12 made a false oath regarding a material fact in connection with these bank teller deposits
13 because the Defendant offered plausible and reasonable explanations for the alleged
14 alternate sources of income and the miscalculations were inadvertent and immaterial.

15 **C. Student Loan Expenses**

16 Plaintiff contends that Defendant made a false oath by listing \$1,500.00 in student
17 expenses for her sons on her original Schedule J, *Plaintiff's Trial Exhibit 23, Schedule J-*
18 *Your Expenses*, at 34, and only after this was shown to be incorrect did she amend
19 Schedule J-Your Expenses to include only \$1,094.00 in student loan expenses for
20 herself. *Plaintiff's (Proposed) Findings of Fact and Conclusions of Law*, ECF 77, lodged
21 on February 2, 2017, at 2. Defendant's original Schedule J:Your Expenses stated the
22 amount of \$1,500.00 for Item 19, "Other payments you make to support others who do
23 not live with you", which stated a specific caption: "COLLEGE FOR BOYS AND
24 COLLEGE BOOKS AND TUITION, SCHOOL LOANS". *Petition, Schedule J: Your*
25 *Expenses*, at 34, Plaintiff's Trial Exhibit 23. Defendant's amended Schedule J stated the
26 amount of \$500.00 for Item 19, "Other payments you make to support others who do not
27
28

1 live with you”, which stated an amended specific caption: “Support for sons” and stated
2 the amount of \$1,094.00 for Item 21, “Other,” with the specific caption: “Student Loans”.

3 Defendant testified at trial that she included her student loan expenses in the
4 amount of the other expenses for the support of her sons on her original Schedule J and
5 that her amended Schedule J simply removed the educational expenses paid for her
6 sons. Defendant’s Trial Testimony, *Audio Recording of Trial* at 10:33-10:34 a.m.

7 Plaintiff further argues that Defendant’s student loan payments inflated her
8 expenses, but that she has not actually made these payments. Plaintiff testified that as a
9 co-signer on one of the five student loans taken out by the Defendant, she had access to
10 the online portal to view account balances on the student loan. Plaintiff’s Trial Testimony,
11 *Audio Recording of Trial* at 10:51-10:53 a.m. and 11:14-11:15 a.m. Plaintiff testified that
12 the online account statements indicated that no payments had been made. *Id.*

13 In response to Plaintiff’s testimony, Defendant testified that she had entered into
14 an agreement with a third party company to consolidate her student loans, that under
15 this agreement, the lender told Defendant that the payments she was making would not
16 appear on her online statement until she had finished making the postconsolidation
17 payments and that she has been paying her student loan debts. Defendant’s Trial
18 Testimony, *Audio Recording of Trial* at 9:48-9:49 a.m., 9:51-9:54 a.m., 10:07-10:11 a.m.
19 and 11:41-11:43 a.m. The court must acknowledge that the questioning of Defendant by
20 counsel and her answers were not completely clear or precise, but the gist of her
21 testimony is that she was and has been making her student loan payments. *Id.* The
22 court finds that Defendant’s testimony explaining why her student loan payments were
23 not reflected online and that she has been making payments to be credible. Defendant
24 testified that she had accumulated a student loan debt of \$100,000, which she is
25 obligated to pay, and this fact supports her testimony that she intended to work out her
26 student loan debt with her student loan lenders through loan consolidation and partial
27 deferment payments and had intended to make the student loan payments as reflected on
28

1 her amended Schedule J. *Id.* This un rebutted testimony of Defendant indicates to the
2 court that Plaintiff has not met her burden of showing by a preponderance of the
3 evidence that Defendant willfully and fraudulently made a false oath in relation to her
4 student loan payments.

5 **D. Miscellaneous Expenses**

6 Plaintiff contends that Defendant made a false oath on her original bankruptcy
7 petition and schedules by overstating her expenses for utility payments based on
8 Plaintiff's personal experience of paying less for utilities. Plaintiff testified at trial that she
9 is a homeowner herself and she personally pays less for her family's utilities. Plaintiff's
10 Trial Testimony, *Audio Recording of Trial* at 11:16-11:19 a.m. The court determines that
11 Plaintiff's lay opinion based on personal experience as a utility customer is neither
12 competent nor credible evidence to show that Defendant overstated her utilities expenses
13 on her amended Schedule J under Federal Rule of Evidence 701 as she has no
14 specialized knowledge in this area and she has a bias as the adverse party.

15 Plaintiff argues that Defendant made a false oath in overstating her utilities
16 expenses on Defendant's amended Schedule J in that Defendant's utility expenses per
17 month prior to the filing of the bankruptcy case averaged \$509.94 per month, which was
18 \$95.06 less per month than the \$605.00 stated on Defendant's amended Schedule J.
19 *Plaintiff's (Proposed) Findings of Fact and Conclusions of Law*, ECF 77, lodged on
20 February 2, 2017, at 2, *citing*, *Plaintiff's Trial Exhibits 2, 3, 4, 5, 8 and 9*. This calculation
21 of Defendant's utilities expenses includes expenses from July – August 2014, which are
22 post-petition and thus should not have been included in the average monthly payments.
23 Therefore, when the average of Defendant's utility expenses for May – July 2014 is
24 recalculated using the numbers provided by Plaintiff in Plaintiff's Trial Exhibit 10, the
25 average for these three months comes out to \$553.98, or only \$51.02 less than the
26 amount Defendant listed in her amended Schedule J: Your Expenses. The court notes
27 that this number is simply an average of the utilities expenses for the three month period
28

1 at issue before the court. As utilities expenses vary month to month, Defendant spent
2 \$512.98 and \$535.30 (\$92.02 and \$69.70 less than the \$605.00 estimate) for the first two
3 months, April 9 through May 8, 2014 and May 9 through June 8, 2014, but then actually
4 spent \$613.80 (\$8.68 more than the estimate) in the third month, June 9 through July 8,
5 2014. This difference between Plaintiff's calculation and the Defendant's reported utilities
6 expenses on the amended Schedule J of roughly \$50 is not material (i.e., in light of
7 Defendant's negative net monthly income of \$2,334.04, ECF 26 at 2), and arguably, the
8 July 2014 figure of \$613.80 is very close to the mark, that is, the amount of \$605.00
9 estimated for utility expenses on her amended Schedule J as to her utility expense as of
10 the petition date of July 7, 2014, and therefore, the court finds that Plaintiff has not met
11 her burden of proving by a preponderance of the evidence that the Defendant willfully
12 and fraudulently made a false oath regarding her current utility expenses on her
13 amended Schedule J: Your Expenses.

14 Plaintiff argues that Defendant made a false oath in overstating her transportation
15 expenses on Defendant's amended Schedule J: Your Expenses in that Defendant's
16 transportation expenses per month prior to the filing of the bankruptcy case averaged
17 \$302.09 per month, which was \$297.91 less per month than the \$600.00 stated on
18 Defendant's amended Schedule J. *Plaintiff's (Proposed) Findings of Fact and*
19 *Conclusions of Law*, ECF 77, lodged on February 2, 2017, at 2-3, *citing, Plaintiff's Trial*
20 *Exhibits 2, 3, 4, 5 and 16*. In response, Defendant argues that Plaintiff's claim of
21 overstated transportation expenses is a "speculative argument" based on only "a few
22 exhibits." *Defendant's (Proposed) Findings of Fact and Conclusions of Law*, ECF 77,
23 lodged on February 15, 2017, at 3. It appears to the court that Plaintiff did not put
24 Defendant on notice that Plaintiff was challenging the claimed transportation expenses
25 since these expenses were not specifically raised in Plaintiff's pretrial pleadings, including
26 her complaint, amended complaint and opposition to Defendant's summary judgment
27 motion. ECF 1, 25 and 63. Moreover, at trial, Plaintiff did not question Defendant at all
28

1 about her transportation expenses at trial, and the only evidence Plaintiff presented
2 pertaining to this issue were the Defendant's bank statements, Plaintiff's Trial Exhibits 3-
3 5, and since Plaintiff did not confront Defendant with the issue by questioning her at trial
4 or putting her on notice pretrial in order for her to meaningfully respond, the court
5 hesitates to give weight to Plaintiff's analysis. Defendant could have explained, for
6 example, that some of these expenses were paid in cash, and not through disbursements
7 from the bank account, or that Plaintiff failed to point out expenses paid through the bank
8 account as transportation expenses. In any event, the allegedly discrepancy of \$300 for
9 transportation expenses is not material in light of Defendant's negative net monthly
10 income of \$2,300 since Defendant's budget is way "underwater" (i.e., negative),
11 indicating the lack of income to pay creditors through a Chapter 11 or 13 payment plan.
12 The court finds that Plaintiff has not met her burden of proving by a preponderance of the
13 evidence that Defendant willfully and fraudulently made a false oath regarding her
14 claimed transportation expenses.

15 In her proposed findings of fact and conclusions of law, Plaintiff conceded that the
16 \$815.00 per month for Child Care and Education stated by Defendant on her amended
17 Schedule J were legitimate expenses incurred by the Defendant for tutoring services for
18 her daughters, but Plaintiff argues that the \$500 in expenses claimed for her two sons,
19 who are her adult children, were "unnecessary and unreasonable". *Plaintiff's (Proposed)*
20 *Findings of Fact and Conclusions of Law*, ECF 77, lodged on February 2, 2017, at 3.
21 Whether the expenses were "unnecessary" or "unreasonable" is not at issue in the case
22 as the standard under 11 U.S.C. 727(a)(4) is whether Defendant made a false oath in
23 relation to a material fact. Plaintiff claims that a false oath was made because the
24 expenses claimed were "unnecessary", but this is not a ground to deny a discharge
25 based on a false oath under 11 U.S.C. § 727(a)(4) since Defendant made the disclosure
26 in her bankruptcy schedules which the parties in interest could review and analyze.

1 Similarly, Plaintiff contends that Defendant made a false oath regarding her
2 medical expenses by including Botox and other cosmetic fillers because such expenses
3 were not necessary living expenses. *Audio Recording of Trial* at 10:56 a.m. Whether an
4 expense listed on the bankruptcy petition and schedules is necessary or not does not go
5 to the issue of whether or not a false oath was made due to the lack of disclosure, which
6 is not the case here.

7 Plaintiff alleges that Defendant made false oaths on her bankruptcy schedules by
8 understating her gross salary income by \$916.03 per month, overstating her utility
9 expenses by \$95.06 per month, overstating her transportation expenses by \$297.91 per
10 month, overstating approximately \$1,000 in student loan expenses, and overstating
11 miscellaneous expenses of \$500.00 in unreasonable expenses for her adult children.
12 *Plaintiff's (Proposed) Findings of Fact and Conclusions of Law*, ECF 77, lodged on
13 February 2, 2017, at 2-3. In sum, Plaintiff alleges that Defendant due to her false oaths
14 as to these items concealed additional income totaling \$2,809 per month. *Id.*

15 As discussed above, the court finds that Defendant's gross salary income may
16 have been understated by approximately \$100 on her original bankruptcy schedules, but
17 it appears that Defendant then overstated her income on her amended Schedule I: Your
18 Income, using the figure of \$7,101, since her monthly direct deposit salary payment
19 amounts were lower. Thus, the court finds that Plaintiff's allegation that Defendant
20 understated her gross salary income by \$916.03 is not supported by the record. As to
21 Defendant's utilities, as discussed above, it appears that Defendant's estimate of \$605.00
22 was accurately stated as Plaintiff's computation for the month ending July 8, 2017, the
23 date after the petition date, was \$613.80, an understatement of expenses, but using a
24 three-month average of the three months before the petition date, then the amount of the
25 overstatement was only \$50, which is not material. As to Plaintiff's allegations regarding
26 Defendant's transportation expenses, the court disregards these allegations that Plaintiff
27 did not make a sufficient showing at trial that Defendant overstated these expenses as
28

1 there was no notice to Defendant in Plaintiff's papers that these expenses were being
2 challenged and that no testimony was elicited on the issue.

3 The court discounts Plaintiff's allegations that Defendant falsely claimed her
4 student loan payments as expenses as the court finds Defendant's testimony that she
5 made arrangements to pay the loans offline and was making payments to be credible.
6 Finally, the court also found that whether the Defendant's expenses disclosed in her
7 schedules were reasonable does not meet the applicable standard to revoke Defendant's
8 discharge under 11 U.S.C. § 727(a)(4).

9 Therefore, at most, the court found that Plaintiff has shown an income
10 understatement by Defendant on the amended Schedule J: Your Expenses of about \$50
11 in utility expenses and \$300 for transportation expenses, and these amounts added
12 together, \$350, are not material in relation to Defendant's negative monthly net income of
13 -\$2,336.04 since making adjustments for these items leaves Defendant with still a
14 negative net monthly income of about -\$2,000.00, indicating no ability to repay creditors
15 through a Chapter 11 or 13 payment plan. *Amended Schedule J: Your Expenses*, ECF
16 26, filed and entered on October 31, 2014 at 2, Plaintiff's Trial Exhibit 8.

17 Plaintiff also argues that Defendant made false oaths "in order to appear to be
18 eligible for a Chapter 7 discharge when in fact she had adequate income to pay her debts
19 and would have 'failed the means test' had she provided accurate information."

20 *Plaintiff's (Proposed) Findings of Fact and Conclusions of Law*, ECF 77, lodged on
21 February 2, 2017, at 3. This argument is unsubstantiated, and the court rejects it
22 because Plaintiff offered no evidence or analysis showing how Defendant "would have
23 failed the means test" to make her eligible for a Chapter 7 bankruptcy discharge. See 11
24 U.S.C. § 707(b)(2)(A)(i). Plaintiff did not offer into evidence any recalculation of
25 Defendant's "means test" on her Form B22A, the official means test calculation form
26 based on Plaintiff's adjustments. Plaintiff's case focused on Defendant's income and
27 expense schedules, Schedules I and J, and cannot be properly construed to assert a
28

1 challenge to Defendant's means test calculation which was not offered into evidence, nor
2 discussed at trial. *See Plaintiff's Trial Exhibits 1-23.* Plaintiff only offered into evidence a
3 one-page except from Defendant's Form B22A means test form relating to Defendant's
4 monthly gross wages, salary, tips, bonuses, overtime, commissions from Santa Clarita
5 Community College, which in no way can constitute a challenge to Defendant's means
6 test calculation. *See Plaintiff's Trial Exhibit 1.*

7 **CONCLUSION**

8 For the foregoing reasons, the court determines that Plaintiff has not shown by a
9 preponderance of the evidence that Defendant knowingly and fraudulently, in or in
10 connection with her Chapter 7 bankruptcy case, made one or more false oaths for
11 purposes of 11 U.S.C. § 727(a)(4) and that Plaintiff's claims under 11 U.S.C. § 727(a)(4)
12 should be denied.

13 This memorandum decision constitutes the court's findings of fact and conclusions
14 of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52
15 of the Federal Rules of Civil Procedure. A separate judgment is being entered
16 concurrently.

17 IT IS SO ORDERED.

18 ###

19
20
21
22
23 Date: July 6, 2017



24 Robert Kwan
25 United States Bankruptcy Judge
26
27
28